IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16073 of 2007
With
SPECIAL CIVIL APPLICATION No. 17067 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RELIANCE INDUSTRIES LIMITED - Petitioner
Versus
GUJARAT STATE INFORMATION COMMISSION & 4 - Respondents

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Appearance in Special Civil Application No.16073 of 2007:
MR MIHIR THAKORE, SENIOR COUNSEL WITH MR DC DAVE for the Petitioner.
MR NV ANJARIA for Respondent No.1.
MR MAULIK NANAVATI, ASSTT.GOVERNMENT PLEADER for Respondent Nos.2 – 4.
MR SB VAKIL, SENIOR COUNSEL WITH MR NAVIN K PAHWA for Respondent No.5.

Appearance in Special Civil Application No.17067 of 2007:
MR MIHIR THAKORE, SENIOR COUNSEL WITH MR DC DAVE for the Petitioner.
MR NV ANJARIA for Respondent No.1.
MS TANUJA N. KACHCHHI, ASSTT.GOVERNMENT PLEADER for Respondent Nos.1 – 6.
MR SB VAKIL, SENIOR COUNSEL WITH MR NAVIN K PAHWA for Respondent No.7.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 16/08/2007

ORAL JUDGMENT

Rule. Learned counsel for the respective parties waive service of notice of Rule on behalf of the respondents.

Important issues have been raised for the adjudication by this Court, under the Right to Information Act,2005, viz:-

[I] Whether the third party is entitled to get, written notice, of request of applicant (who is seeking information), so as :-

(i) to allow/ permit the third party to treat the information (relating to or supplied by the third party) as confidential, if so far not treated as confidential; and

(ii) to oppose the disclosure of such information i.e. information relating to or supplied by the third party and has been treated as confidential by the third party under Section 11(1) to be read with Section 7(7) of the Act,2005.

[II] Whether the third party is entitled to get an opportunity of personal hearing before disclosure of information relating to or supplied by the third party and has been treated as confidential by the third party under Section 11(1) to be read with Section 7(7) of the Act,2005.

[III] Whether Public Information Officer should pass speaking order when he discloses information relating to or supplied by the third party and has been treated as confidential by the third party?

[IV] What satisfaction must be arrived at prior to the information relating to or supplied by third party and has been treated as confidential by that third party is disclosed?

[V] As right of First Appeal as well as Second Appeal is given to third party under Section 19(2) and 19(3), Whether upon request by third party, Public Information Officer should stay his order, giving information about third party at least, till appeal period is over, as like air or smell, information once disclosed, it will spread over, without there being further restrictions, and evenif third party succeeds in First Appeal/Second

Appeal, it cannot be gathered back or cannot be ordered to be returned.

The aforesaid petitions have been preferred seeking a writ of mandamus, or any other appropriate writ, order or direction for quashing and setting aside the order dated 31st January,2007 passed by respondent No.1 i.e. Gujarat State Information Commission (Annexure "C" to the memo of the petition) as well as the order dated 9th March,2007 passed by respondent No.2 i.e Labour Commissioner and Appellate Authority (Annexure "F" to the memo of the petition) under the Right to Information Act,2005 (hereinafter referred to as "the Act,2005") as well as the communication dated 9th March,2007 issued by respondent No.4 i.e. Public Information Officer (Annexure "G" to the memo of the petition) and also for a writ, order or direction for commanding respondent Nos.1, 2 and 4 for recalling of information supplied to the original applicant – Rasiklal Mardia and for a direction upon the original applicant – Rasiklal Mardia, not to use such information for any purpose whatsoever and for a writ of prohibition or any other appropriate writ, order or direction restraining the respondent authorities from further proceedings with the complaint of the original applicant i.e. Rasiklal Mardia under Section 18 of the

Act,2005 being Complaint No.541/06-07 and for a writ of mandamus or any other appropriate writ, order or direction commanding respondent Nos.1 to 6 in Special Civil Application No.17076 of 2007 not entertaining any application or proceeding at the instance of Mr.Rasiklal S. Mardia under the provisions of the Act,2005, so far as it is pertaining to the petitioner and its group companies.

2. <u>Summarized Facts of the case</u>:

2.1 Several applications (as per arguments of learned Senior Counsel for the petitioner, there are about 55 applications by now) have been preferred by the original applicant i.e. Rasiklal S. Mardia for getting information about the petitioner and its group Companies. One such application is dated 25th July,2006, which was preferred by the said applicant under Section 6 of the Act,2005 to respondent No.3, who transferred the said application to the respondent No.4 on 29th August,2006. He also preferred an application to respondent No.2 (first Appellate Authority) on 21st August,2006. Meanwhile, respondent No.3 wrote a letter dated 29th August,2006 to the original applicant that he may contact respondent No.4 for getting information and his application dated 25th July,2006 has been transferred to respondent No.4. Therefore, he preferred an application in the form of

Complaint under Section 18 of the Act,2005 to respondent No.1, which is second Appellate Authority. Respondent No.1 (Second Appellate Authority) remanded the case to respondent No.2, (who is first Appellate Authority) vide order dated 31st January,2007, wherein this respondent No.1 has already conveyed that whatever information demanded is to be given and, therefore, respondent No.2 has also directed Public Information Officer at Jamnagar that whatever information is demanded ought to be given. Thus, order dated 31st January,2007 was followed scrupulously by respondent No.2 and, thereafter by respondent No.1. Order was passed on 9th March,2007 by respondent No.2, who is sitting at Ahmedabad and direction was given to Public Information Officer, who is stationed at Jamnagar. Whatever information was sought for by the original applicant was supplied by Public Information Officer, Jamnagar (which is at distance approximately 350 kms.) on the very same day i.e. on 9th March,2007. Thus, order passed by respondent no.1 dated 31st January,2007 is under challenge as well as order passed on 9th March,2007 passed by respondent No.1, Ahmedabad is also under challenge and information supplied by Public Information Officer, Jamnagar on 9th March,2007 to the original applicant is also under challenge, which are at Annexure “C”, “F” and “G” respectively to the memo of the petitions.

2.2 Informations demanded by the original applicant i.e. Rasiklal Mardia (in Special Civil Application No.16073 of 2007), are as under:

> *"(1) You have recommended for Sales Tax exemption as per Government Policy for **Reliance Petrochemicals Ltd.** and your Department has confirmed that they have complied with terms and conditions of the Govt. as to local employment etc. Please provide complete copy, verification report done to the labourers working there with proof whatever is available with you and whether genuinely local people are employed is verified or not.*
>
> *(2) Any complaint received by you that they have not complied with the local people and false certificate is issued by your office. If yes copies of all the correspondence and copy of compliance received by you.*
>
> *(3) Year wise inspection done by your Dept. and confirmation that local people are continuously checked, confirmed their eligibility for sales tax exemption benefits and other benefits given to them for putting up the industry.*
>
> *(4) If they have not complied with the terms & conditions whatever action has been initiated by your Dept. and the recommendations made by your Dept. for action to be taken against the company for not complying with terms & conditions, entire copy of the correspondence and present status.*
>
> *(5) Several people died during the time of construction of Refinery. Status of that and copy confirming how many people died, action initiated by your Dept. and the present status of the cases and copy of the case papers." (Emphasis supplied)*

Thus, the aforesaid informations were demanded

by the original applicant i.e. Rasiklal Mardia. These informations were pertaining to the petitioner Company and its group Companies.

2.3 It also appears from the facts of the case that never any of the authorities have given any notice nor the petitioner was heard before supplying the information relating to the petitioner. It is averred by the petitioner that there is business/commercial rivalry by the original applicant – Rasiklal Mardia with the petitioner Company. This allegation is substantiated by further affidavit filed by the petitioner. Reference of Civil Suit No.1431 of 2003 and Civil Suit No.3189 of 2002 has been given. These Suits are filed by the original applicant- Rasiklal Mardia [the applicant, who has applied for getting information under Section 6 of the Act,2005, who is referred hereinafter as "**the original applicant**"] for damages against ICICI Bank and in para 6(A) and 7 in the respective plaints, reference of petitioner company is also referred for pointing out commercial / business rivalry between the original applicant and the third party (petitioner).

2.4 It is also brought on record by way of further affidavit filed by the petitioner that the applicant is a defaulter and more than one dozen criminal cases have

been filed by **Union of India** through Rabi Barua – Officer, Serious Fraud and Investigation Office, Ministry of Company Affairs, New Delhi (in short "SFIO") for various offence viz. for improper calculation of depreciation and signing false annual accounts, for failure to maintain liquid assets and for failure to repay the matured deposit amounts. Details of these one dozen offences are annexed at Annexure "J" to the affidavit filed by the petitioner on 25th July,2006.

2.5 Total 32 applications were preferred for getting information about the petitioner and its group companies and during the course of arguments, this figure increased upto 55 in numbers. In this background, these petitions have been preferred alleging violation of principles of natural justice by the respondent authorities and the information is obtained by the original applicant, who is having commercial rivalry with the petitioner.

3. Contentions advanced by Learned Senior Counsel for the petitioners :

It is submitted by learned Senior Counsel Mr.Mihir Thakore with Mr. Dhaval Dave for the petitioners that there is commercial rivalry by the original applicant with the petitioner and its group companies and the Suits have been filed by him as stated hereinabove.

There is a reference of the petitioner company in the plaints of the Suits. The applicant is a defaulter and several criminal complaints have been filed against him by Union of India. Therefore, no such application may be entertained by the respondent authorities, at the instance of Mr.Rasiklal S. Mardia under the provisions of the Act,2005, so far as it is pertaining to the petitioner and its group companies. No opportunity of making a representation or written notice was given by the respondent authorities as required under Section 11(1) of the Act,2005 and no representation was considered by the Public Information Officer as per Section 7(7) of the Act,2005. No opportunity of personal hearing was afforded by the respondent authorities. Therefore, orders passed by respondent authorities are unilateral/arbitrary and violative of Article 14 of the Constitution of India. It is also submitted that as per Section 11(1) of the Act,2005, a written notice ought to be given to the petitioner to make a representation to the Public Information Officer, which was never given. The petitioner is a third party as defined under Section 2(n) of the Act,2005 and, therefore, the petitioner was required to be heard by the respondent authorities before imparting information relating to the petitioner and its group Companies. It is contended by learned counsel for the petitioners that no reasons were given by the

concerned respondent authority before supplying the information relating to the petitioner. Totally non-speaking orders have been passed. While passing order, reasons are required, if the information is supplied about the third party, under Section 7(1) of the Act,2005. The said order is an appealable order under Section 19(1) of the Act,2005. As per Section 11(2), even third party can prefer an application. Public Information Officer is a quasi judicial authority. It has also been contended by learned counsel for the petitioners that the words under Section 11(1) “..... **has been treated as confidential by that third party** .....” means, before imparting the information, a third party can treat the information (sought for by the original applicant) relating to third party or supplied by third party, as confidential. In the facts of the present case, a letter was written by the petitioners dated 18th May,2007 (Annexure “A” to Civil Application No.17067 of 2007) that information asked by the original applicant - Rasiklal S. Mardia about the petitioner and its group company is treated as confidential by the third party and request was also made to give an opportunity of being heard, to the petitioner, before disclosure of the information. A reply was given by Public Information Officer, on 30th May,2007 that the information asked by the original applicant was not pertaining to the petitioner and,

therefore, there is no need to give an opportunity of being heard to the petitioner. It is also stated by learned counsel for the petitioners that several applications were given to the concerned respondent authorities i.e. Principal Secretary, Industry and Mines Department as well as to the Chief Secretary, Government of Gujarat about the information relating to the petitioner, under the Right to Information Act, which was asked by Rasiklal Mardia, with a prayer that no such information should be given to Rasiklal Mardia about the petitioner and its group Companies, without giving an opportunity of being heard to the petitioner as contemplated under Section 11 of the Act,2005. A detailed list of such applications preferred by the original applicant is given along with Special Civil Application No.17067 of 2007, especially at Annexure “I” to the memo of the petition. It is contended by learned counsel for the petitioners that when arguments were over, the figure has crossed 55 in numbers. Thus, Rasiklal Mardia, because of commercial rivalry has applied under Section 6 of the Act,2005 for the information relating to the petitioner and its group Companies, which cannot be given to the original applicant, in breach of the provisions of the Act,2005. It is also vehemently submitted by learned counsel for the petitioners that the manner in which respondent No.1 has decided the matter vide order dated

31st January,2007 requires to be scrutinized accurately. It appears that without any appeal preferred before Second Appellate Authority, respondent No.1 remanded the matter to respondent No.2, who is first Appellate Authority, with a clear direction in para-4 of the said order to provide information to the original applicant i.e. Rasiklal Mardia, free of charge and within 30 days from the date of order. This direction was given by Second Appellate Authority to respondent No.2, who is first Appellate Authority, who in turn, directed Public Information Officer at Jamnagar to supply the information, whatever are asked for, by the original applicant. The order was passed by the respondent No.2 at Ahmedabad on 9th March,2007 and direction was given to the Public Information Officer at Jamnagar. It is also contended by learned counsel for the petitioners that on the very same day, Public Information Officer, Jamnagar, which is at long distance from Ahmedabad who obeyed the order even without reading it and supplied the information to the original applicant i.e. Rasiklal Mardia on the very same day. Thus, method in which the orders passed by respondent Nos.1, 2 and 4 is such that, it requires a close scrutiny as the said orders are not only in defiance of the provisions of the Act,2005 but are in violation of principles of natural justice. It is also contended by learned counsel for the petitioners

that in the facts of the present case, none of the authorities i.e. neither respondent No.1 nor respondent No.2 nor respondent No.4 have arrived at a conclusion that public interest in disclosure outweighs harm or injury to the protected interest of third party. Nor a conclusion is arrived at that larger public interest warrants disclosure of such information. No such satisfaction is arrived at by any of the authorities and, therefore also, all three orders dated 31st January,2007 passed by respondent No.1; order dated 9th March,2007 passed by respondent No.2 and information supplied by respondent no.4 vide letter dated 9th March,2007 deserve to be quashed and set aside as they are in gross violation of the provisions of the Act,2005 and the principles of natural justice. As the information is already supplied in defiance of the provisions of the Act,2005, the same may be ordered to be recalled from the original applicant – Rasiklal Mardia or a direction may be given to the original applicant not to make use of said information for any purpose whatsoever.

4. <u>Contentions advanced by learned counsel for the original applicant – Rasiklal Mardia</u> :

Learned counsel for the original applicant (Rasiklal Mardia) submitted that the petitioners have no locus standi to file these petitions. Nothing secret is

revealed. No reasons are required to be given for seeking information. Right to get information is an absolute right. Public Information Officer has no right to deny information on the ground of intention of the applicant. Only commercial competitor can best use the information to minimize corruption. No hearing is contemplated under Section 7 of the Act,2005. At the most, Public Information Officer has to consider a representation given under Section 11(1) of the Act,2005. Very rigid is time bound schedule given under the Act,2005 for supply of the information and, therefore, time is an essence and drastic are the consequences, if application seeking information is not disposed of within time bound schedule. Penalties are provided under Section 20 of the Act,2005 and, therefore, this dilutes the principles of natural justice. Even original applicant is not required to be heard under Section 7 of the Act,2005. It is a matter entirely between the original applicant and Public Information Officer. It is contended by learned counsel for the original applicant that the case is not covered under Section 11(1) of the Act,2005, and, therefore, there is no need to follow any procedure by the Public Information Officer prescribed under Section 7(7) of the Act,2005. There is also no need to hear third party, at the most, third party has a right to make a representation. Section 11 has been read and re-read by

learned counsels for both the parties and it is contended by learned counsel for the original applicant that this Section 11 is entirely based upon confidentiality. If the test of confidentiality fails, Section 11 is not applicable and if Section 11 is not applicable, there is no question of inviting third party to make a representation. Consequently, there is no need to hear third party. Public Information Officer has not to hold any inquiry, not to hear the original applicant, not to hear the third party and not to follow the Court trappings and, therefore, his function is administrative in nature. It is contended by learned counsel for the original applicant that if the petitioners are aggrieved by the order dated 9th March,2007 passed by Public Information Officer, Jamnagar, an appeal has been provided under Section 19 of the Act,2005 and, therefore, writ is not tenable at law. It is contended by learned counsel for original applicant that it is upon the satisfaction of the Public Information Officer, which entitles the third party for show cause notice. If Public Information Officer is of the opinion that the case of the third party is not covered under Section 11(1) of the Act,2005, there is no need to give any show cause notice to the third party. Only a trade and commercial secrets protected by law is excluded. In fact, the petitioner is not a third party. It is further submitted that second

petition being Special Civil Application No.17067 of 2007, is not tenable at law as the information has already been given, it has become infructuous and, therefore, no prayers can be granted. No petitions can be filed on behalf of the group Companies of the petitioner Company. Economically, they may be one but in the eye of law, they all are separate Companies and, separate entities and, therefore, both these petitions deserve to be dismissed.

It is further stated that as the information has already been disclosed to the present petitioner and so, issuance of writ is futile and, therefore, petitions may not be entertained by this Court.

5. <u>Contentions advanced by learned counsel for respondent No.1 – Gujarat State Information Commission</u> :

Learned counsel for respondent No.1 - Gujarat State Information Commission i.e. Second Appellate Authority, submitted that these petitions are futile writ petitions. There is no applicability of principles of natural justice for passing an order under Section 7 of the Act,2005. It is further submitted that Section 18 gives the width of the power, the area of power and the nature of power. Section 18(1) begins with words “Subject to the provisions of this Act, ...”. These words,

enlarges, the scope of Section 18 of the Act,2005. Section 19 of the Act,2005 pertains to appeal. Therefore, Section 18, 19 and 20 are to be read together. Section 18 is for the complaint. Section 19 is for the appeals (First Appeal as well as Second Appeal) and Section 20 is for the penalty. It is further submitted that right to get information has travelled beyond the public authorities. It can go to the private authorities or to the Government authorities. He has also narrated the words used in Section 11(1) of the Act,2005 that "..... has been treated as confidential by that third party" and pointed out that though it is in continuous present tense. These words by themselves are not permitting the subsequent intention of the third party to treat the said information as a confidential. It is vehemently submitted that respondent No.1 while exercising powers under Section 18 of the Act,2005, is not supposed to give hearing to the third party and, therefore, the order passed on 31st January,2007 is true, correct and in consonance with the facts of the case. He has also relied upon "no prejudice" theory and pointed out that by giving information, no prejudice is going to cause to the petitioner and, therefore, hearing is an empty formality.

REASONS:

6. I have heard the learned counsels for both the sides, who have read and re-read the following relevant provisions of The Right to Information Act,2005 as well as the Gujarat Right to Information Rules,2005, are as under :

Sections 2(n), 7(1), 7(7), 8(d) and 8(j) and 11(1), (2), (3) and (4) and Section 19 as well as Rule 6 of the Gujarat Right to Information Rules,2005, read as under:

> ***Section 2(n)*** *"**third party**" means a person other than the citizen making a request for information and includes a public authority."*
>
> ***Section 7. Disposal of request. - (1)*** *subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of Section 6, the Central Public Information Officer or State Public Information Officer, as the case may be on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9;*
>
> *Provided that whether the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.*
>
> ***(7)*** *Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall take into consideration the representation made by a third party under section 11.*

Section 8. Exemption from disclosure of information.- *(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*

(a) .....
(b) .....
(c) .....

(d) *information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*

(e) .....
(f) .....
(g) .....
(h) .....
(i) .....

(j) *information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.
(2) .....
(3) .....

Section 11. Third party information. - (1) *Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that*

third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is

entitled to prefer an appeal under section 19 against the decision.

***Section 19. Appeal.**-(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer, as the case may be, in each public authority:*

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public

Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, ***shall give a reasonable opportunity of being heard to that third party.***

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to-

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-

(i) by providing access to information, if so requested, in a particular form;
(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
(iii) by publishing certain information or categories of information;
(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
(v) by enhancing the provision of

training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

Rule 6 Appeal.

*(1) Any person aggrieved by a decision of the Public Information officer in **Form D** or **Form F**, or does not receive any decision, as the case may be, he may prefer an appeal in **Form G** within thirty days from the date of receipt or non-receipt of such decision, to appellate authority appointed by the Government in this behalf.*

(2) The applicant aggrieved by an order of the appellate authority under sub-rule (1) may prefer the second appeal to the State Information Commission within ninety days from the date of the receipt of the order of the appellate authority giving following details:

(i) Name and address of the applicant;
(ii) Name and office address of the Public Information Officer;
(iii) Number, date and details of the order

against which the Second appeal is filed;
(iv) Brief facts leading to second appeal;
(v) Grounds for appeal;
(vi) Verification by the appellate;
(vii) Any information which commission may deem necessary for deciding the appeal.

(3) Every appeal made to the Commission shall be accompanied by the following documents:
(i) Certified copy of the order against which second appeal is preferred.
(ii) Copies of documents referred and relied upon by the appellant along with a list thereof.

(4) While deciding appeal the commission may, -
(i) take oral or written evidence on oath or on affidavit;
(ii) evaluate the record;
(iii) inquire through the authorized officer further details or truthfulness;
(iv) summon the Public Information Officer or the appellate authority who has heard the first appeal;
(v) hear the third party; and
(vi) obtain necessary evidence from the Public Information Officer or the appellate authority who has heard the first appeal.

(5) The Commission shall serve the notice in any one of the following mode,-
(i) service by the party itself;
(ii) by hand delivery;
(iii) by registered post with acknowledgment due; or
(iv) through the Head of the Department or it's subordinate office.

(6) The Commission shall after hearing the parties to the appeal, pronounce in open proceedings its decision and issue a written order which shall be authenticated by the registrar or such officer as may be authorized by the Commission in this behalf.

(Emphasis supplied)

The aforesaid provisions are repeatedly read out before this Court and pointed out that the information, if relates to or supplied by a third party and has been treated as confidential by that third party, such third party should be given notice by the Public Information Officer before taking decision under Section 7(1) of the Act,2005. Looking to Section 11(1), Public Information Officer if intends to disclose the information relating to or supplied by third party, has to give written notice to that third party as to information sought for by the original applicant. Looking to the provisions of the Act,2005, a representation can be made by the third party as to confidentiality of information as to disclosure of information. This representation can be made orally or in writing. The words used under Section 11(1) of the Act,2005 is “submission”. **Third party can make a submission in writing or orally**. This submission can be made orally only when opportunity of being heard is given. Looking to the provision of Section 7(7) of the Act,2005, it is a duty cast upon Public Information Officer that he shall take into consideration a representation made by the third party under Section 11(1) of the Act,2005. Here, words used is “representation”. Thus, as per section 11(1) of the Act,2005, submission can be made by the third party orally and whenever a representation is made under

Section 11(1) by a third party, it ought to be taken into consideration by the Public Information Officer. Looking to these two provisions and also keeping in mind the fact that third party has been given a right to prefer an appeal under Section 19(2) of the Act, as well as right of Second Appeal is also given under Section 19(3) and duty is cast upon the second Appellate Authority to give an opportunity of being heard to the third party, especially under Section 19(4) of the Act,2005, therefore, in my opinion, it is a duty vested in the Public Information Officer to give an opportunity of personal hearing to the third party, to get his submissions, whether he treats the information as confidential and whether information should be disclosed, if the information is relating to or is supplied by the third party.

7. It is contended by learned counsel for original applicant as well as by Gujarat State Information Commission that third party cannot treat the information as confidential subsequently. The words used “.... has been treated as confidential by that third party” do not give right to the third party to treat the information as confidential, subsequent in point of time. This contention is also not accepted by this Court, looking to the provision of Section 11(1) of the Act,2005, the

words, the information " **relating to or is supplied by the third party**" are such that it is for the third party to point out to the Public Information Officer that the information sought for, to be disclosed/supplied is treated as confidential or not. It may happen that when public body collects the information relating to or given by third party, it might not have been treated as confidential but, third party can make a submission that now it is treating the said information as confidential. More so, when information is "relating to third party" it may not even known to that third party, when and what information relating to third party, was collected by public body. Therefore, Section 11(1) of the Act,2005, gives mandate to Public Information Officer to give written notice to third party if he intends to disclose information relating to third party. Therefore, looking to nature of information, to be disclosed, third party can make written or oral submission whether the information is confidential or not and whether the information should be disclosed or not. Afflux or passage of time, sometime allows that third party to treat the information as confidential. When third party starts business, it might have given several information to public body for getting permissions/licences. At that time, these information might not have been treated as confidential. By afflux of time, commercial rivalry /

competition increases. Somebody starts similar business subsequently. If this man asks for information about the third party, Public Information Officer has to give notice to third party and though information was not treated as confidential, initially, in my opinion, under Section 11(1), third party can treat the information suppled by it as confidential. Similarly, if any information relating to third party has collected by public body, third party may not be knowing, what information, relating to it is collected by public body. Therefore, third party may not be knowing importance of such information collected by public body. If any person is asking for this information, relating to third party, in my opinion, as per Section 11(1), Public Information Officer has to give notice to third party and it can treat the information relating to third party as confidential, though it was not treated as confidential initially, because, it may not be known to it what important information relating to third party is gathered/ collected by public body. Complexity of commerce and trade or Development of economic transactions may compel a third party to treat an information “relating to or supplied by third party” as confidential. What is confidential to the third party is known to the third party alone. There may not be a rubber stamp upon the information that this is a

confidential information. It is a right vested in the third party to treat any information “relating to or supplied by the third party” as confidential. Confidentiality of information depends upon several factors like business of third party, nature of commercial transactions of the third party, etc.. Therefore, as per Section 11(1) of the Act,2005, a written notice is required to be issued to the third party by Public Information Officer, whenever an information to be disclosed is “relating to the third party or is supplied by the third party”. The words “**relating to**“ are very general in nature. They take into their sweep, not only the documents, which are supplied by the third party but also any document is pertaining to third party or any document, which has direct nexus with the affairs of the third party. It is for the third party to point out to the Public Information Officer upon receipt of the notice whether he treats the said information as confidential or not. Even grametical meaning of the words “ .... has been treated as confidential by that third party” leads to the same conclusion. It is present perfect tense. It is contended by learned counsel for the petitioners that the information 'has been treated' is still a present tense before the nearest past. Few sentences explaining present perfect tense were pointed out as under:

(i) How long you have been married.

(ii) They have been living in the same house for 13 years.

(iii) Animals have been here for the centuries.

In the aforesaid three sentences, words 'have been' used, they give the meaning that something is lasted for sometimes. Words used in Section 11(1) - '... and has been treated as confidential by that third party' is giving meaning that the third party can treat information 'relating to or supplied by him' as confidential information, at any point of time, before the information disclosed or supplied by Public Information Officer. Whenever any information sought for, is relating to third party or supplied by third party, as per Section 11(1) of the Act,2005, and if Public Information Officer intends to disclose the information, he has to give notice to the third party. Submissions can be made by the third party in writing or orally and this submission ought to be considered by the Public Information Officer, as per Section 7(7) of the Act. An opportunity of being heard ought to have been given by Public Information Officer. There is no express exclusion of hearing process. Submissions can be made even orally. Public Information Officer has to consider these submissions or representation. In view of these

provisions, I am of the opinion that Public Information Officer should give opportunity of personal hearing to third party before imparting information. In the facts of the present case, no such hearing was ever afforded before imparting the information relating to the petitioner and, therefore, the orders passed by respondent Nos.1, 2 and 4 deserve to be quashed and set aside.

8. Speaking order to be passed, when information relating to or supplied by the third party and has been treated as confidential by that third party:

It is also contended by learned counsel for the original applicant as well as by Gujarat State Information Commission that no reasons are required to be assigned under Section 7(1) of the Act,2005, for passing an order for grant of information. This contention is also not accepted by this Court, mainly for the reason that if the information supplied is pertaining to third party, reasons for imparting such information to the applicant ought to be given, otherwise, appellate authority cannot know the mind of Public Information Officer. An appeal is provided under Section 19(2) of the Act,2005. Third party can prefer an appeal. Reasons reveal the mind of the Lower Authority. Reasons of an order is like soul of an order, without order must be

declared ineffective. If the reasons are not given for disclosure of the information relating to third party or supplied by third party, the order can be known as non-speaking order. In the facts of the present case, the orders passed by the respondent authorities are totally non-speaking orders and, hence, deserve to be quashed and set aside.

It has been contended by learned counsel for the original applicant that the Public Information Officer has not to decide dispute or lis nor has to hold an inquiry nor has to follow the Court trappings and, therefore, his act is purely administrative in nature and has relied upon the decision rendered by Hon'ble Supreme Court reported in **AIR 1963 SC 874 as well as AIR 1664 SC 1140 as well as AIR 1963 SC 677** and, therefore, decision of the Public Information Officer under Section 7 is purely administrative in nature and, hence, he is not required to pass a speaking order. This contention is not accepted by this Court for the reason that the Public Information Officer is disclosing the information relating to or supplied by a third party, which has been treated as confidential by that third party. As per Section 11(1) of the Act,2005, show cause notice in writing ought to be given by him to a third party. Third party can object disclosure of the information. Thus, Public Information Officer is deciding a dispute or lis

between the applicant and a third party and, therefore, the said authority would be a quasi-judicial authority. His decision will prejudicially affect the rights of the third party. It has been held by Hon'ble Supreme Court in the case of **Indian National Congress V/s. Institute of Social Welfare and others reported in AIR 2002 SC 2158,** especially in para-24, as under :

> *"24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforestated decisions are these:*
>
> *Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.*
>
> *Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi-judicial authority. However, in the absence of a lis before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially."*
>
> *(Emphasis supplied)*

Thus, in view of the aforesaid decision also, Public Information Officer is a quasi-judicial authority as is empowered under the statute i.e the Act,2005 to do an act (disclosing of information), which would affect

prejudicially a third party. Third party can prefer an appeal under Section 19(2) of the Act,2005. Therefore, such authority has to pass a reasoned order.

9. Proceedings under Sections 7 and 11 of the Act,2005 :

As per Section 6 of the Act,2005, any applicant can apply for getting information and such application has to be disposed of, as per Section 7 of the Act,2005. Section 7(7) of the Act,2005, imposes a duty upon the Public Information Officer that he shall take into consideration a representation made by a third party under Section 11 of the Act,2005. Section 11 is applicable when information to be disclosed is 'relating to or supplied by a third party' and has been treated as confidential, by that third party. To know, Whether information 'relating to or supplied by the third party' has been treated as confidential by that third party, Public Information Officer has to give notice. Public Information Officer cannot unilaterally decide, on its own, that the information, sought for by the applicant, is confidential or not. Whether information has been treated as **confidential**, by the third party or not, that can be said only by the third party and upon getting such submission in writing or orally, Public Information

Officer has to consider them while taking a decision about disclosure of information. Looking to the aforesaid provision of Section 7(7) read with Section 11 of the Act,2005, it appears that **which document or information has been treated as confidential by that third party that ought to be disclosed by the third party** in reply of the show cause notice, which must be given by Public Information Officer as stated hereinabove. Submission can be made even orally before the Public Information Officer. These words are sufficient enough to impose duty upon Public Information Officer to give personal hearing to a third party. In fact, Public Information officer if discloses the information in violation of the provisions of the Act,2005 and if the appeal is preferred by the third party and if he succeeds, it is difficult to get back such information from the original applicant. Public Information Officer or any authority under the Act,2005 if is deciding the disclosure of the information relating to third party or supplied by the third party, which has been treated as confidential by that third party and if any application for stay of the order is applied, it ought to be granted for a reasonable period, so that the third party can prefer First Appeal or Second Appeal.

10. <u>Whether time limit prescribed for imparting information dilutes the principles of natural justice</u> :

It is vehemently submitted by learned counsel for the original applicant that very rigid and time bound schedule has been given to the Public Information Officer, under the Act,2005. No sooner did the application is received for getting information, the clock starts. If the information is not supplied within time bound schedule, drastic are the consequences. There is a presumption under Section 7(2) that if the information is not supplied within time, it shall be deemed to have refused. Under Section 20 of the Act,2005, Public Information Officer or the responsible Officer is liable for the penalty and, therefore, there is no need by Public Information Officer to hear the third party. This contention is not accepted by this Court for the reasons as stated hereinabove and looking to Sections 7(7), 11(1), 11(3), 11(4) read with Section 19(2) and 19(4), it is the duty vested in Public Information Officer to invite a submission from a third party. Such submission can be in writing or orally. They must be considered by the Public Information Officer. Right to make oral submissions, means right of personal hearing. Even under Rule 6(4)(v) of the Gujarat Right to Information Rules,2005, third party may be heard by First Appellate Authority and, under Section 19(4), explicitly and unequivocally, a right of personal hearing is given. As per the Act,2005-

(i) written notice to third party must be given [as per Section 11(1)];

(ii) third party can make submissions in writing or orally;

(iii) these submissions must be kept in view [as per Section 11(1)] or shall have to be considered [as per Section 7(7)] by Public Information Officer;

(iv) Public Information Officer has to pass speaking order or Public Information Officer has to give reasons, if information 'relating to or supplied by third party and has been treated as confidential by that third party' is to be disclosed;

(v) copy of this order must be given to third party [as per Section 11(3)];

(vi) third party has to be informed that he can prefer an appeal [as per Section 11(4)];

(vii) right of First Appeal is given to third party [as per Section 19(2)];

(viii) right of Second Appeal is also given to third party [under Section 19(3)]

(ix) Under Rule 6(4)(v) of the Gujarat Information Rules,2005, third party can

get opportunity of personal hearing before First Appellate Authority.

(x) *duty is also imposed upon Second Appellate Authority to provide opportunity of hearing to third party [as per Section 19(4)].*

In view of these provisions under the Act,2005, I am clearly of the opinion that time bound schedule given under the Act,2005, is not ousting a right of hearing vested in a third party before imparting information to the applicant, 'relating to or supplied by that third party and has been treated as confidential'. Confidentiality of the information is such a vital subject that it requires proper understanding by Public Information Officer. Looking to the aforesaid provisions of the Act,2005, hearing of third party is a must. Time bound schedule given under the Act,2005 should be kept in mind and hearing ought to be over, keeping in mind, the time bound schedule given under the Act. It has been held by Hon'ble Supreme Court in the case of **Dr.Rashlal Yadav V/s. State of Bihar and others reported in (1994)5 SCC 267,** especially in para 6, relevant part of para-6 reads as under:

“.....
.. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered

only if they are fairly and reasonably applied. In order to ensure fair and reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove time-consuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indications to the contrary as in the present case. ..... ” (Emphasis supplied)

Thus, unless the law expressly or by necessary implication excludes the application of the rule of natural justice, Courts will read the said requirement in enactments that are silent and insist on its application. Looking to the provisions of Section 7(7), 11(1), 19(2), 19(3) and 19(4), I am clearly of the opinion that

applicability of the principles of natural justice are excluded before taking decision under Section 7 and, therefore, even if it is a time-consuming process as stated in the aforesaid para, the principles of natural justice ought to be followed to ensure fairness in the decision by Public Information Officer.

Thus, Time bound schedule given under the Act,2005 is not for ousting the hearing of a third party but is only for the prompt, quick and early disposal of the application, preferred by the applicant under Section 6 of the Act,2005, so that information can be supplied as quickly as possible to the applicant. Everything cannot be done so hurriedly that the rights given to third party under Section 11 are violated. What information has been treated as confidential by the third party is known to the third party. Public Information Officer has to understand confidentiality of the information, its effect upon the third party and has also to keep in mind, right of applicant to get information. Sometimes such informations are relating to trade or commercial secrets protected by law and, therefore, proviso has been provided under Section 11(1) of the Act,2005, that if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party, the disclosure of information is allowed by Section 11(1) of the Act,2005. Likewise are the provisions, vis-a-vis third

party under Sections 8(d) and 8(j). But before arriving at this having far reaching consequences, conclusion by Public Information Officer, he ought to give an opportunity of being heard to a third party, even in existence of time bound schedule given by the Act,2005. Thus, in view of the aforesaid provisions, the principles of natural justice are not diluted, by time bound schedule given under the Act,2005.

11. What satisfaction must be arrived at, prior to disclosure of information about third party :

Looking to the provisions of the Act especially Section 8(d), 8(j) and proviso to Section 11(1) and looking to the process of disclosing information to the applicant 'relating to or supplied by the third party and treated as confidential by the third party', the Act imposes a duty upon Public Information Officer to arrive at a conclusion that public interest in disclosure outweighs, harm or injury, to the protected interest of such third party, or larger public interest warrants, disclosure of such information.

In considering whether the public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party, the Public Information Officer will have to consider the following :

(i) The objections raised by the third party by claiming confidentiality in respect of the information sought for.

(ii) Whether the information is being sought by the applicant in larger public interest or to wreak vendetta against the third party. In deciding that the profile of person seeking information and his credentials will have to be looked into. If the profile of the person seeking information, in light of other attending circumstances, leads to the construction that under the pretext of serving public interest, such person is aiming to settle personal score against the third party, it cannot be said that public interest warrants disclosure of the information solicited.

(iii) The Public Information Officer, while dealing with the information relating to or supplied by the third party, has to constantly bear in mind that the Act does not become a tool in the hands of a busy body to settle a personal score.

Learned counsel for the petitioner has relied upon the decision rendered by Hon'ble Supreme Court in the case of **Ashok Kumar Pandey V/s. State of West Bengal and others reported in AIR 2004 SC 280**, especially in paras 12 and 14, read as under:

> *"12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process wither by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.*
>
> *14. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; © the information being not vague and indefinite. The information should show gravity and*

> *seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motive, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy me. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even o their own to protect."*
>
> *(Emphasis supplied)*

Thus, for arriving at a conclusion that public interest in disclosure outweighs, harm or injury, to the protected interest or larger public interest warrants disclosure of such information, credentials of the applicant or profile of a person should also be kept in mind.

Thus, the aforesaid factors will be considered by Public Information Officer before disclosing the information "relating to or supplied by a third party and has been treated as confidential by that third party". To arrive at this conclusion, Public Information Officer has to give notice to a third party. They ought to allow a third party to make a submission thereafter, he must hear the third party and finally, he has to pass a

speaking order. In the facts of the present case, no conclusion has been arrived at by the concerned respondent authorities, and, hence, the orders passed by concerned respondent authorities deserve to be quashed and set aside.

12. Proceedings under Sections 18 and 19 of the Act,2005 :

Learned counsel for the petitioners submitted that though no second appeal was preferred by the applicant before respondent No.1, respondent No.1 passed an order on 31st January,2007 to disclose the information and the matter was remanded to respondent No.2. The Second Appellate Authority remanded the matter to the First Appellate Authority and, thereafter, mathematically and without application of mind, rest of the authorities have followed the direction dated 31st January,2007. In response to this, it is contended by learned counsel for respondent No.1 that Sections 18, 19 and 20 are read simultaneously and not in isolation, then, extent, width and nature of the power is given under Section 18 of the Act,2005. If there is any complaint, it will be considered as per Section 18 and if the complaint is received, the order can be passed by respondent No.1, without giving any opportunity of being heard to the third party. Section 19 pertains to appeals (First

Appeal as well as Second Appeal) and Section 20 pertains to penalty and, therefore, it is submitted by learned counsel for respondent No.1 that there is no illegality by respondent No.1 in passing an order dated 31st January,2007. This contention of respondent No.1 is not accepted by this Court mainly for the reasons as stated hereinabove that a third party has got certain rights under the provisions of the Act,2005, as confidential information is to be disclosed or supplied to the applicant. Confidentiality of the information cannot be ignored by Public Information Officer. In the facts of the present case, as stated hereinabove, the informations which were asked by the applicant were relating to the third party. He preferred an application on 25th July,2006 to the respondent No.3 under Section 6 of the Act,2005. The respondent No.3 transferred the said application to respondent No.4 on 29th July,2006, respondent No.3, who is Public Information Officer at Ahmedabad had correspondingly brought to the notice of the applicant that he may contact respondent No.4 for getting information, who is Public Information Officer at Jamnagar. This communication is dated 29th August,2006. Being aggrieved by this communication, the applicant had preferred an application before respondent No.1, who is Second Appellate Authority. Looking to the facts of the case, he passed a final order, (which could have been

passed by Public Information Officer, after following procedure as referred hereinabove) and remanded the matter to respondent No.2 (who is first Appellate Authority). There is no such provisions under the Act,2005 for remanding such application to respondent No.2 because it was a complaint under Section 18. As per learned counsel appearing for respondent No.1, in fact, no second appeal was preferred before respondent No.1 by the original applicant. Nothing was decided by the first Appellate Authority and, therefore, there is no question of remanding the matter to respondent No.2 whatsoever arises and that too, with the final decision to impart information as prayed for by the original applicant and because of his order dated 31st January,2007, which is totally in violation of provisions of the Act,2005 and in violation of principles of natural justice. I accept this contention. Respondent No.1 cannot pass an order dated 31st January,2007. Looking to Section 18(1) empowers to inquire into a complaint. As per Section 18(2), if there are reasonable grounds, State Information Commission can hold inquiry. As per Section 18(3) provides teeth for holding inquiry. Certain powers vested in Civil Court under Civil Procedure Code have been invested in the Commission. Scope of Section 18 is different from Section 19. Section 19 provides Appeals (First Appeal and Second Appeal). In appeal, order passed by lower authority can

be quashed or it can be amended or modified or can be upheld. Appeal is continuation of earlier proceedings.

In the facts of the present case, order dated 31st January,2007 passed under Section 18. No appeal was preferred under Section 19. In fact, State Information Commission has no power or jurisdiction to pass such order under Section 18, for the following reasons :

(i) The Information Commission has no authority or jurisdiction to pass an order directing the Appellate Authority to part with information under Section 18 of the Act.

(ii) The order clearly indicates that the Appellate Authority is left with no discretion except to issue suitable directions and to arrange to provide information.

(iii) No scope has been left for the Assistant Public Information Officer or the Public Information Officer to decide the matter considering the provisions of Section 11.

(iv) Direction is given that the lower authorities should not only provide information, but to furnish to the Commission the information so provided.

(v) The power under Section 18 is limited to hold an inquiry into a complaint and if necessary, impose penalties under Section 20. It is not

an appellate power for the appellate power is found in Section 19.

(vi) The effect of the order dated 31.01.2007 is that the petitioner has been completely deprived of statutory right of appeal. This would be evident from the fact that the Labour Commissioner has been directed to furnish information and further the Labour Commissioner has directed in turn the Assistant Labour Commissioner vide order dated 09.03.2007 to disclose the information. All appeals in the circumstances have become nugatory. Alternative remedy, which would be generally available, is completely lost in view of the order passed by the Information Commissioner.

It appears that rest of the authorities have mechanically followed that order dated 31st January,2007. Respondent No.2 is the first Appellate Authority, who directed from Ahmedabad on 9th March,2007 to furnish the information. As per order dated 31st March,2007, direction was given by respondent No.2 at Ahmedabad for information to be supplied by respondent No.4, who is at Jamnagar and on the very same day, respondent No.4, who is at Jamnagar supplied information to the original applicant because of direction in the order dated 31st January,2007. An order passed by the Officer at Ahmedabad, whether was properly read or understood by Officer at Jamnagar is not even

properly coming on the record of the present case. The distance between Ahmedabad and Jamnagar is more than 300 kms. As this Court is quashing and setting aside the impugned three orders passed by respondent Nos.1,2 and 4 on the ground of violation of principles of natural justice, on the ground of orders being non-speaking orders and passed without giving notice and opportunity of personal hearing to the third party, this Court is not much analyzing scope of Section 18 read with Section 19 of the Act,2005 and this point is kept open whether Sections 18 and 19 are working independently or not. **A thing which cannot be done directly, can never be done indirectly. A right vested in the third party directly under Section 11(1) read with Section 7(7) of the Act,2005 cannot be taken away by respondent No.1** treating the application preferred by the original applicant dated 7th September,2006 as the complaint under Section 18 of the Act,2005. In other words, information which cannot be given under Section 7, can never be given under Section 18. Because Section 7 is to be read with Section 11(1), without hearing third party, no information can be supplied if it is relating to or supplied by third party and has been treated as confidential by the third party. Thus, a grave error has been committed by respondent No.1 in passing the order dated 31st January,2007, which is apparent on the face of the record.

13. Locus standi :

It is submitted by learned counsel for the original applicant that the petitioners have no locus standi to file these petitions. Looking to the provisions of the Act and the information asked by the original applicant, the information is relating to the present petitioner and its group Companies. Petitioner and its group Companies are third party under Section 2(n) of the Act,2005 and there are also allegation as to commercial rivalry. Two Suits have been filed by the original applicant bearing Civil Suit No.1431 of 2003 and Civil Suit No.3189 of 2002. The commercial rivalry is referred to in para 6 and 6-A in respective plaints. Learned counsel for the petitioners submitted that more than a dozen criminal complaints have been filed by Union of India through its Officers, Serious Fraud and Investigation Office, Ministry of Company Affairs, New Delhi, against the applicant. 32 such applications have been given by the very same applicant seeking information about the petitioner and its group companies. The figure 32 has gone upto more than half a century by now. Profile of a person is also to be seen by Public Information Officer for arriving at conclusion as to whether public interest, in disclosure outweighs harm or injury to the private or protected of the third party or

whether larger public interest warrants disclosure of such information. With this texture of fabric of facts, I am of the clear opinion that the petitioners have locus standi to prefer these petitions.

14. Procedure to be followed when order is against third party :

Right to get information and right to treat the particular information as confidential is to be seen through the provisions of the Act,2005 by Public Information Officer before disclosing the information because once the information is disclosed, which is confidential, it is extremely difficult for the higher / Appellate Courts to put the clock back. Release of information is like air or smell. Once it is allowed to spread over, it cannot be called back, by Appellate Forums. Therefore if the stay is prayed, by third party, against disclosure of information, relating to or supplied by third party and has been treated as confidential by that third party, it ought to be given, at least till appeal period is over. There is no restriction upon applicant, for further transmission of information, after getting the same. If stay is not granted, perhaps, no fruits of favourable order in Appeal can be enjoyed by third party. In practical sense, order cannot be upset by higher forums. Once information is

allowed to go in the hand of applicant, it is irreversible process. It makes practically First Appeal or Second Appeal or Writ petition, infructuous or every time relief will have to be moulded. Therefore, to make First Appeal or Second Appeal, effective, stay ought to be granted, if the decision is against the third party under Right to Information Act,2005.

Confidential information ought not be disclosed by the Public Information Officer except for the situation, which are referred to hereinabove. Exceptions are mentioned in the Act,2005 especially in Sections 8 and 9 of the Act,2005. As stated hereinabove, Public Information Officer should keep in mind public interest outweigh harm or injury to the protected interest or Public Information Officer has to draw attention of his mind that larger public interest warrants disclosure of such information. In the facts of the present case, no such conclusion has been arrived by any of the respondent authorities and, therefore, impugned orders affect the petitioners and hence have locus standi to challenge the impugned orders.

15. <u>Rights of third party</u> :

There are certain rights conferred by the Act,2005 to the third party, prior to disclosure of information. Likewise, as stated hereinabove, there are

also certain rights, which are vested in the third party, after an order of disclosure of the information 'relating to or supplied by the third party and has been treated as confidential by that third party'. As per Section 2(n) of the Act,2005, the present petitioner is a third party. Looking to the provisions of the Act,2005, especially Section 7(7), 8(d) and 8(j) read with Section 11 as well as under Section 19 of the Act,2005, third party has certain rights, in relation to disclosure of information relating to third party or supplied by third party :

Pre-decisional Rights :

(i) As per Section 11 of the Act,2005, third party should be given a written notice if Public Information Officer intends to disclose or supply, the information 'relating to or supplied by the third party';

(ii) The said notice ought to be given by the Public Information Officer as to which information is asked by the applicant about the third party. Thus, nature of information asked by the applicant has to be revealed in the said notice;

(iii) Third party has right to treat the said information as confidential, looking to the

several factors, viz. nature of business of the third party, nature of commercial transactions, looking to the nature of correspondence with other various Institutes, looking to the nature of reports supplied by the third party or supplied by some other Institutions about the third party, etc. Third party can treat the information as confidential at any stage, prior to grant or disclosure of information to the original applicant, by Public Information Officer;

(iv) Third party ought to be invited to make a submission in writing or orally by Public Information Officer;

(v) It is a right vested in the third party that such submission shall be kept in view, while taking a decision by Public Information Officer about disclosure of information (as per Section 11(1) of the Act,2005) or third party has right that the Public Information Officer shall take into consideration the representation made by a third party under Section 11 (as per Section 7(7) of the Act,2005);

(vi) Third party has a right of personal hearing

to be given by Public Information Officer. Looking to Section 8(d) and 8(j) and proviso to Section 11(1), disclosure of information may be allowed, (i) if public interest in disclosure, outweighs, harm or injury to the protected interest of third party, or

(ii) if larger public interest warrants the disclosure of such information. This will be a complex decision by Public Information Officer as it will have direct nexus with some of the important rights of third party. It may harm the competitive position of third party or it may tantamounts to unwarranted invasion, upon right of privacy;

Therefore also, in my opinion, personal hearing ought to be afforded to the third party.

(vii) Third party has a right to get speaking order. If order is not a speaking order then, the Appellate Authority cannot read the mind of the Public Information Officer. Right to prefer an appeal has been given to the third party under Section 19 of the Act,2005. Reasons of the order, is the soul of the order, without which order has no life. Otherwise also, non-speaking order

leads to arbitrariness. In case of Mr.A information will be ordered to supply whereas in other case, it can be denied. Arbitrariness and equality are sworn enemies of each other. Where arbitrariness is present, equality is absent and where, equality is present, arbitrariness is absent.

Post-decision Rights :

(viii) When Public Information Officer orders to disclose an information 'relating to or supplied by third party and has been treated as confidential by that third party' under Section 7, and if third party prays for stay of operation, implementation and execution of the order to prefer an appeal, or to approach higher forum generally it ought to be given at least till appeal period is over, except for the cogent reasons, to be recorded in writing. Wrongly disclosed/supplied, confidential information relating to third party or supplied by third party, will be like spreading over, of air. It is practically impossible, for appellate forum, even if third party succeed in first appeal or second appeal or in writ petition,

to order to return the wrongly disclosed information. Like smell, it will spread over from one hand to another hand, information can reach to different hands without any restriction. There is no restriction, after getting information.

(ix) It is a right vested in a third party to get notice in writing of the decision of the Public Information Officer with a statement therein, that a third party is entitle to prefer an appeal (as per Section 11(3) and 11(4) of the Act,2005)

(x) Third party has a right to prefer First Appeal against the order passed by Public Information Officer (as per Section 19(2) of the Act,2005)

(xi) Third party has a right to prefer Second Appeal under Section 19(3) of the Act,2005.

(xii)Third party has a right of personal hearing before Appellate Authority as well as Second Appellate Authority (as per Rule 6(4)(v) of the Rules,2005) as well as under Section 19(4) of the Act,2005.

The aforesaid rights of the third party have been violated by the concerned respondent authorities. No

notice was given to the third party, nor even the third party was heard before imparting the information by the respondent authorities. The impugned orders are non-speaking orders. Hence, the impugned orders deserve to be quashed and set aside.

16. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the order dated 31st January,2007 passed by respondent No.1 i.e. Gujarat State Information Commission (Annexure “C” to the memo of the petition) as well as the order dated 9th March,2007 passed by respondent No.2 i.e Labour Commissioner and Appellate Authority (Annexure “F” to the memo of the petition) as well as the communication dated 9th March,2007 issued by respondent No.4 i.e. Public Information Officer (Annexure “G” to the memo of the petition) are hereby quashed and set aside. The original applicant – Rasiklal Mardia is hereby directed not to make use of said information for any purpose whatsoever. Respondent No.1 – Gujarat State Information Commission is hereby restrained from proceeding further with application preferred by the original applicant under Section 18 of the Act,2005 being Complaint No.541/06-07. Respondent Nos. 1 to 6 in Special Civil Application No.17067 of 2007 are hereby directed not to entertain any applications preferred at the instance of the original applicant under the

provisions of the Act,2005 concerning the petitioner and its group Companies for imparting or disclosing information to the original applicant, without following due procedure under the Act,2005 and in compliance with the aforesaid directions given in the aforesaid paras of this judgment nor any such applications shall be proceeded further by respondent Nos.1 to 6, except after following provisions of the Act,2005 and interpretation thereof made hereinabove, in this judgement. Rule made absolute in both the petitions.

(D.N.PATEL,J)

17. Learned counsel for the original applicant – Rasiklal Mardia prayed for stay of the operation of the aforesaid order. It is opposed by the learned counsel for the petitioner. Looking to the facts and circumstances of the case and the provisions of the Act,2005 and for the reasons stated hereinabove, the request made by learned counsel for the original applicant is not accepted by this Court.

(D.N.PATEL,J)

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